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11 *Attorneys for Defendants*

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13 Zervigon, Colin L. Powell, Peter Teti, Mary K.
Bush, and Kelly A. Ayotte

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 ELISSA M. ROBERTS, Individually and on
Behalf of All Others Similarly Situated,

18 Plaintiff,

19 vs.

20 BLOOM ENERGY CORPORATION, et al.,

21 Defendants.

Lead Case No. 4:19-cv-02935-HSG

CLASS ACTION

**STIPULATION AND ORDER
REGARDING HEARING ON LEAD
PLAINTIFF'S CONFIDENTIALITY
MOTION AND DEFENDANTS'
RESPONSE TO THE AMENDED
COMPLAINT (modified)**

Assigned to: Honorable Haywood S. Gilliam, Jr.

STIPULATION

Pursuant to Civil Local Rule 7-12, this stipulation and proposed order is submitted by

- Lead Plaintiff James Everett Hunt (Lead Plaintiff),
 - Defendants Bloom Energy Corporation, KR Sridhar, Randy Furr, L. John Doerr, Colin L. Powell, Scott Sandell, Peter Teti, Eddy Zervigon, Mary K. Bush, Kelly A. Ayotte (the Bloom Energy Defendants), and
 - J.P. Morgan Securities, LLC, Morgan Stanley & Co. LLC, Credit Suisse Securities (USA) LLC, KeyBanc Capital Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Cowen & Company, LLC, HSBC Securities (USA) Inc., Oppenheimer & Co. Inc., Raymond James & Associates, Inc., and Robert W. Baird & Co. Incorporated (the Underwriter Defendants, and together with the Bloom Energy Defendants, Defendants).

WHEREAS:

1. On May 28, 2019, Elissa M. Roberts filed a federal securities class action in the above-captioned matter in the United States District Court, Northern District of California against the Bloom Energy Defendants.

The Confidentiality Motion

2. On September 3, 2019, following the briefing of lead plaintiff motions, this Court appointed James Everett Hunt as Lead Plaintiff and Levi & Korsinsky, LLP as Lead Counsel (ECF No. 39).

3. On November 1, 2019, Lead Plaintiff filed a Motion to Limit Scope of Confidentiality Agreement (the Confidentiality Motion).

4. The briefing on the Confidentiality Motion is now complete. Oral argument on the Confidentiality Motion was scheduled before Judge Orrick for December 17, 2019.

5. On December 13, 2019, this case was reassigned to Judge Gilliam and all hearing dates, including the December 17, 2019 hearing date for the Confidentiality Motion, were vacated.

6. Lead Plaintiff and the Bloom Energy Defendants have met and conferred regarding a

1 hearing on the Confidentiality Motion and are available for oral argument on this Court's February
2 6, 2020 calendar.

3 **Motion to Consolidate**

4 7. While this action was still assigned to Judge Orrick, Lead Plaintiff filed a motion to
5 consolidate this action with a second action, *Bolouri v. Bloom Energy Corp. et. al.*, Case No. 3:19-
6 cv-07259. Oral argument on the motion to consolidate was also scheduled for December 17, 2019.
7 That argument date was vacated when the case was reassigned to Judge Gilliam.

8 8. Lead Plaintiff believes that there is no need to reschedule argument on his motion to
9 consolidate because the motion is now moot. On December 11, 2019, the *Bolouri* action was
10 voluntarily dismissed.

11 **Response to the Amended Complaint**

12 9. On November 4, 2019, Lead Plaintiff filed an Amended Complaint in this action. The
13 Underwriter Defendants were named for the first time in the Amended Complaint.

14 10. The Bloom Energy Defendants' current deadline to respond to the Amended Complaint,
15 pursuant to a stipulated order entered by Judge Orrick on September 30, 2019, is January 10, 2020.
16 The same stipulated order provides that if the Bloom Energy Defendants respond by moving to
17 dismiss, the opposition to and reply in support of the motion will be due on March 10, 2020 and
18 April 24, 2020 respectively.

19 11. Pursuant to an agreement among the parties, the Underwriter Defendants' current deadline to
20 respond to the Amended Complaint is January 10, 2020.

21 12. Lead Plaintiff and the Bloom Energy Defendants have met and conferred and have agreed
22 that the most efficient course of proceeding for the parties and the Court is to reset the Defendants'
23 obligation to respond to the Amended Complaint at such time as Lead Plaintiff determines whether it
24 will seek to file a Second Amended Complaint. Lead Plaintiff's determination depends on this
25 Court's ruling on the pending Confidentiality Motion.

26 13. Lead Plaintiff and Defendants have further agreed that the best way to foster efficiency – but

1 at the same time keep the case moving forward – is by adopting the following deadlines:

- 2 a. Within 14 days of the Court’s ruling on the Confidentiality Order, Lead Plaintiff
3 will advise Defendants whether he intends to seek to file a Second Amended
4 Complaint or to stand on the current Amended Complaint.
- 5 b. If Lead Plaintiff advises Defendants that he intends to stand on the Amended
6 Complaint, Defendants shall respond to the Amended Complaint within 45 days
7 of the date on which Lead Plaintiff so advises Defendants. If Defendants’
8 response is a motion to dismiss, then the opposition will be due 60 days from the
9 filing of the motion to dismiss and the reply will be due 35 days from the date of
10 the filing of the opposition.
- 11 c. If Lead Plaintiff advises Defendants that he intends to seek leave to file a Second
12 Amended Complaint, Lead Plaintiff will file that (proposed) complaint within 30
13 days of the Court’s ruling on the Confidentiality Motion.
- 14 d. Assuming Lead Plaintiff is granted leave to file his Second Amended Complaint,
15 Defendants’ response will be due within 45 days of the filing of the Second
16 Amended Complaint. If Defendants’ response is a motion to dismiss, then the
17 opposition will be due 60 days from the filing of the motion to dismiss and the
18 reply will be due 35 days from the date of the filing of the opposition.

19 **IT IS THEREFORE STIPULATED AND AGREED** by Lead Plaintiff and Defendants
20 that, subject to the Court’s approval:

- 21 1. Oral argument on the Confidentiality Motion will be heard on the Court’s February 6,
22 2020 calendar.
- 23 2. Following the Court’s ruling on Lead Plaintiffs’ motion to dismiss, the schedule set
24 forth in paragraph 13, above, will govern Defendants’ responses to the Amended
25 Complaint or Second Amended Complaint.

26 **IT IS SO STIPULATED.**

1 Date: December 27, 2019

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8 Date: December 27, 2019

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1 Date: December 27, 2019

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15 *Incorporated, Cowen & Company, LLC,*
16 *HSBC Securities (USA) Inc., Oppenheimer*
17 *& Co. Inc., Raymond James & Associates,*
18 *Inc., and Robert W. Baird & Co.*
19 *Incorporated*

ORDER

Pursuant to the parties' stipulation, and for good cause shown, IT IS SO ORDERED that:

1. Oral argument on the Confidentiality Motion will be heard on the Court's February 13, 2020 calendar at 2:00 p.m.
 2. Following the Court's ruling on Lead Plaintiffs' motion to dismiss, the schedule set forth in paragraph 13 of the stipulation above will govern all Defendants' responses to the Amended Complaint or Second Amended Complaint.

DATED: 12/30/2019

By: Haywood S. Gilliam, Jr.
Honorable Haywood S. Gilliam, Jr.
United States District Judge